Hurtado Point Trail - Improvement of Trails Under the Forest Practices Code

Complaint Investigation 990193

December 1999

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103-06333/

The Investigation

On July 2, 1999, the Board received a complaint from a Powell River resident about a trail leading to Hurtado Point, near Lund, in the Sunshine Coast Forest District.

Section 102 of the *Forest Practices Code of British Columbia Act* (the Act) requires a person to obtain the consent of the district manager before constructing, rehabilitating or maintaining a trail on Crown land. The complainant was aware that a group of people had recently improved the trail to Hurtado Point without approval from the district manager, and that the district was investigating this possible contravention of the Code. Based on a newspaper article and discussions with those who cleared the trail, the complainant felt that the work done on the trail was minor, and did not require the consent of the district manager. Ministry of Forests district staff disagreed. The complaint stated that the Ministry of Forests appeared to be misinterpreting section 102.

The complainant asked the Board to provide clarification and interpretation of section 102, and any exceptions in the Forest Practices Code.

The Board investigation focussed on whether or not the consent of the district manager was required for the work done to the trail. The Board also considered whether clarification or interpretation of section 102 of the Act was required.

Background

In the fall of 1998, a group of people found an old, partially overgrown trail that led to Hurtado Point, which is a steep bluff overlooking the Strait of Georgia. The trail is approximately 1.2 kilometres long. They cleared trees and brush from the trail to make it passable.

In February 1999, staff of the Sunshine Coast Forest District learned that the Hurtado Point trail had been cleared. They were concerned about the location of the trail and public safety, because the trail bordered private land and led to steep bluffs overlooking the Strait of Georgia. Ministry staff also felt that some of the work done on the trail, including tree cutting and stair construction, required the district manager's approval under section 102 of the Act.

In March 1999, the ministry began an investigation into potential contraventions of section 102 of the Act. At the same time, ministry staff "rehabilitated" the trail by placing debris and slash back on it to discourage public use. Shortly thereafter, someone cleared the trail again.

The district interviewed two representatives of recreation groups who might have information about the clearing of the trail. One admitted to locating and marking the route with flagging tape, but claimed to have done nothing that required the district manager's approval under section 102.

The district could not identify the individuals who did the actual clearing, so no penalties were imposed. In a follow-up letter to the person who marked the trail, the district explained why section 102 approval was required, and asked that those reasons be passed on to other trail users. The district's view was that a section 102 approval was required because the ministry needed to confirm that the land was Crown land, evaluate environmental sensitivity, address

safety concerns, and mark the location of a trail on maps for forest management planning purposes.

After walking the trail in May with ministry staff, the person who marked the trail agreed to relocate two sections of the trail away from the bluffs to address safety issues, and to make other improvements.

The complainant has no direct association with the person who marked the trail. He learned through the local paper that ministry staff moved debris back onto the trail and submitted his complaint to the Board in July. Although the complainant has not hiked the trail, he believed that the work done to re-open the trail was minor. The complainant felt that minor clearing of brush and trees from an established trail did not require the approval of the district manager, according to the *Trails and Recreation Facilities Guidebook*.

Investigation Findings

The *Forest Practices Code of British Columbia Act* and the *Forest Recreation Regulation* set out the legal requirements for clearing and maintaining trails. Section 102 of the Act requires a person to obtain the consent of the district manager before constructing, rehabilitating, or maintaining a trail or other recreation facility on Crown land.

Section 3 of the *Forest Recreation Regulation* sets out the exceptions to section 102:

> 3. (1) For the purposes of section 102 of the Act, the construction, rehabilitation or maintenance of a trail or recreation facility does not include
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> (a) marking a route with ribbons, cairns or other directional indicators,
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> (b) minor, piecemeal clearing of brush or downed trees, or
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> (c) emergency repairs to a trail or recreation facility that are necessary to prevent imminent damage to the trail or facility.
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> (2) Despite section 102 of the Act, a person may construct, rehabilitate or maintain a trail without the consent of the district manager if doing so is the only reasonable means of minimizing a risk to personal safety.

Section 4 of the regulation explains how to obtain the consent of the district manager, by preparing a proposal.

The *Trails and Recreation Facilities Guidebook* provides advice for individuals or groups interested in constructing, rehabilitating or maintaining trails, and elaborates further on section 102 and the regulation.

The guidebook provides examples of activities that do and do not require the consent of the district manager. For example, hiking on Crown land and minor clearing of brush or downed trees either on or off established trails does not require the district manager's consent. However, cutting standing trees and constructing structures such as stairs or bridges requires consent.

According to the guidebook:

> Section 102 was established on the grounds of fairness and consistency in regulating all forest practices and the need for this authority to ensure public safety, protect the environment and manage resource use conflicts. Section 102 was designed to encourage a more planned approach to trail and recreation facility construction, rehabilitation and maintenance on provincial Crown land.

The Board's analyst hiked the trail and found that primitive stairs had been constructed in one location. Logs were cut and placed over two wet areas and a few five-inch diameter trees had been cut. Brush and dead trees were cleared, and some parts of the trail were grubbed to establish a footpath. This is more work than described in section 3(1). In addition, the ministry's concerns for public safety were well founded – the trail leads to steep bluffs. Furthermore, the entrance to the trail is located on a curved section of highway 101, and there is little room for parking. The entrance is not in an ideal location from a safety standpoint. Sections of the trail also pass immediately beside private land.

Since the investigation, the person who located the trail has done some work to relocate it. However, the ministry is still not satisfied that all the agreed-upon work has been completed.

At the time he submitted his complaint to the Board, the complainant was unaware that stairs were constructed, that trees had been cut or that the trail had been grubbed. The complainant has since learned that these activities took place, and now acknowledges that they required approval under section 102.

Finding:

The ministry and the complainant agree that the district manager's consent was required under section 102 for some of the work done to the Hurtado Point trail.

When the complainant accepted that some of the trail work at Hurtado Point required the district manager's consent, he did not consider the matter to be closed. The complainant is an avid hiker who routinely maintains trails as he hikes them. He is aware that the *Forest Recreation Regulation* provides exceptions to the requirements of section 102. He is also aware that the *Trails and Recreation Facilities Guidebook* elaborates on those exceptions by providing examples of activities that do and do not require the consent of the district manager. The complainant asked for clarification of the exceptions to section 102. He is concerned that the maintenance he does on established trails could risk penalties by the ministry.

The *Trails and Recreation Facilities Guidebook* provides examples of activities that do and do not require the district manager's consent. However, they are stated to be only examples and do not cover all possible activities that might take place while constructing, maintaining or rehabilitating a trail or recreational facility that do not require the district manager's consent.

In the Board's opinion, it is impossible to provide explicit language in legislation or guidebooks that clearly covers every situation encountered while constructing or maintaining trails for recreational access in the province. Situations in wet coastal forests will be different from drier parts of the province or alpine areas. Similarly, issues like public safety have a bearing on whether section 102 consent is required.

The guidebook advises anyone who is uncertain about whether or not their intended activity requires consent to contact the nearest Forest Service office. The Board believes that this is a wise procedure. District staff would certainly be knowledgeable about local conditions and are in the best position to provide advice about whether or not activities require the consent of the district manager.

The district manager wrote to the Board early in the investigation and indicated that his staff would be quite willing to meet with the complainant to discuss the application of section 102 on a local and site specific basis. The Board encourages the complainant to accept the ministry's offer.

The panel of the Board that concluded this report was Keith Moore, Klaus Offermann and Liz Osborn.